

*AMENDMENTS TO THE DRAWINGS*

Applicants submit seven pages of replacement drawings identical to the drawings originally filed with the patent application.

Attachment: Replacement Sheet(s)

*REMARKS/ARGUMENTS*

In response to the Office Action mailed March 8, 2007, Applicants amend their application and request reconsideration. No claims are added or cancelled so that claims 1-20 remain pending.

*Drawings*

The Examiner stated that the disclosure of the patent application admitted drawings and, therefore, requested that a drawing be supplied. In fact, the patent application was filed with seven sheets of drawings as acknowledged on the Official Filing Receipt. However, the PAIR system does include any drawings for this patent application but, instead, includes as the first document in the PAIR a statement that the application was deficient as lacking drawing sheets during scanning.

While Applicants can prove the filing of the seven sheets of drawings with the patent application as filed through a postcard receipt, better evidence is provided by published U.S. Patent Application 2003/0225668. That published patent application corresponds to the present patent application. Although the published patent application includes no figure on the first page, it does include seven sheets of drawings which are identical to the enclosed replacement drawing sheets.

The publication of the patent application with the drawings proves that the patent application was filed with the seven sheets of drawings for which replacements are supplied here. No new matter issue can be raised by the drawings supplied since these drawings are identical to published drawings. It appears the absence of drawings in the PAIR resulted from mishandling of the application within the U.S. Patent and Trademark Office.

*Amendments*

In this Amendment some minor errors in the specification, first identified in considering the Office Action, are corrected.

Likewise, some clarifying non-substantive amendments of the claims examined are made here. For example, the first polling signal is now referred to as being “transmitted” rather than merely provided. Further, it is expressly explained that the selling price is not a selling price for the probe detector but rather for the telematic data that is collected by the probe detector. The amended claims make clear that the first polling signal is transmitted from the system node to the vehicle or vehicles that collect telematic data. In some claims surplus words are eliminated for clarity. No claim amendment changes the scope of any claim.

A minor omission in the Abstract is corrected and the Abstract is shortened to meet current requirements.

*The Invention*

While the invention is defined by the claims, and seems to have been clearly understood in the course of examination, some brief review of the invention is appropriate. In the invention, motor vehicles traveling along a traffic route include probe detectors. The term “probe detector” and many other terms are explicitly defined in the patent application. Most generally, a “probe detector” according to the invention is a transponder, i.e., a device that receives a signal and, in response, transmits a signal. “The transponder functionality may be integrated with the operation of a cellular telephone, a global positioning system...transceiver or the like, or be performed by a dedicated device of a vehicle”. See the patent application at page 4. In the invention, the probe detector collects telematic data if the vehicle is in operation. “Telematic data” is data created by the combination of telecommunications and information processing capabilities of a properly equipped vehicle, such as an automobile.” Telematic data may include the intended destination of the automobile, the intended route for bringing the automobile to the destination, and any re-routing

decided upon in response to encountered traffic. Most generally, telematic data is traffic condition information.

The probe detector, using its transponder function, is part of a negotiation of sale of the telematic data that is acquired by the probe detector. The probe detector receives a first polling signal transmitted from a system node. That first polling signal includes a first offer for purchasing the collected telematic data. The probe detector determines whether the first offer for purchase is adequate, i.e., at least equals an established selling price. If the offer price at least equals the established selling price, then an availability signal is transmitted by the probe detector, agreeing to the sale of at least some of the telematic data that has been collected. The negotiation process indicated by this comparison of the first offer to the selling price is followed by the optional transmission of a release signal to the probe detector from the system node if the sale agreed to is to be completed. Upon receipt of that release signal, then at least some of the telematic data collected by the probe detector is transmitted to the system node. See claims 2, 12, and 18.

Alternatively, if there is no agreement with regard to the first offer and the selling price, no availability signal is transmitted by the probe detector. In that event, as described in claims 10, 13, and 18, a second polling signal may be transmitted from the system node and including a second, different offer for purchase of the telematic data that has been collected.

If agreement is reached on the sale of the telematic data, then a payment is arranged to the credit of the probe detector and respective vehicle. As an alternative to a payment, a content credit may be given. Through the use of the content credit, the vehicle may interrogate the system node for traffic data that has been collected from other vehicles and that may be useful to the vehicle in traveling between an origin and a destination, i.e., that may permit the choice of an optimal route, avoiding traffic jams and like impediments or delays to travel.

*The Rejection*

All of claims 1-20 were rejected as unpatentable over Hubschneider et al. (Published U.S. Patent Application 2002/0091486, hereinafter Hubschneider) in view of Patel (U.S. Patent 7,043,227, hereinafter Patel). This rejection is respectfully traversed.

*Response to the Rejection*

The reasons for traversal of the rejection are discussed in detail below. In summary, the Office Action attributes disclosure to both of Hubschneider and Patel that is absent from those publications. With respect, it is suggested that the publications have been interpreted far beyond their actual disclosures with knowledge of the invention in mind. Further, no proper motivation for modifying Hubschneider with Patel has been supplied. The combination must be the product of knowledge of the invention since there is no teaching nor suggestion in either publication for their combination. For these reasons, reconsideration and withdrawal of the rejection are respectfully requested.

Hubschneider is certainly pertinent prior art and describes the collection of traffic information from cars that are actually in transit. The information gathered is referred to as floating car data (FCD). This FCD is transmitted to a central location and stored in a central traffic information data memory. When a vehicle wishes to plan travel between a point of origin and a point of destination, a request for traffic information data can be sent to the central traffic information memory for planning based upon up-to-date traffic information. Transmission of FCD to the control unit may be either manual or automatic but there is no detailed description as to how that transmission is initiated and no suggestion that a polling signal is periodically transmitted

According to the Office Action at page 5, Hubschneider at paragraph [0005] describes a system node providing a first polling signal (...“embedded mobile station”). Since there is no such disclosure at that paragraph of Hubschneider it is

difficult to comprehend the basis of the rejection and to reply to that basis. As discussed below, the cited paragraph of Hubschneider is one of the few paragraphs of that publication that deals with economic considerations, i.e., the cost of gathering and price of obtaining telematic data. Further, it is not understood what is meant by the reference to "embedded mobile station". An electronic word search of Hubschneider indicates that the words "embedded" and "station" are never used in that publication and the word "mobile" only appears once. If whatever reliance has been placed upon the cited term is to be maintained, Applicants respectfully request a further explanation of the source of the term and how it applies to any rejected claim.

The particular apparatus employed to gather FCD in Hubschneider is not described in detail. According to page 4 of the Office Action, Hubschneider describes a probe detector, like the probe detector of the rejected claims because, according to the Office Action, at paragraph [0005] Hubschneider describes something that is "equipped with a global positioning system (GPS)." The cited paragraph of Hubschneider has already been mentioned and does not refer to any GPS. Rather, the sole reference to a GPS in Hubschneider appears in paragraph [0034]. Moreover, a GPS is a receiver that provides position information and is not within the scope of the definition of a probe detector as defined in the patent application. As already stated, according to that definition provided in the present patent application, a probe detector is a transponder and might include a GPS. Thus, Applicants again request, if this ground of rejection is to be relied upon in the future, a further explanation of what elements are found in Hubschneider that correspond to the probe detector of the rejected claims.

The Office Action acknowledges that Hubschneider lacks any disclosure of a polling signal including a first offer and the negotiation of the probe detector described in the final paragraphs of independent claims 1 and 11 and in independent method claim 17. For purposes of later demonstrating the absence of any basis for modifying Hubschneider with Patel, it is useful to review what economic considerations are mentioned in Hubschneider. The paragraph [0005], repeatedly

referred to in the Office Action, mentions that communication costs could not be correlated with "reciprocal financing" for telematic services. While there is little additional explanation, it is stated that the profits expected could not be derived from these services. Paragraph [0021] seems to state that when a driver requests traffic information from the central control unit, a charge is made. That paragraph also describes giving credits against further information requests to drivers who supply traffic information. The same paragraph suggests that such information might only be transmitted at the instigation of a driver in order to maintain his anonymity. Essentially no other information concerning the buying and selling of traffic information appears in Hubschneider. Clearly, there is no reference to any kind of bargaining process.

Patel bears no relationship to the buying and selling of any kind of information. Rather, Patel is directed to the buying and selling of bandwidth, i.e., slices of the electromagnetic spectrum, that may be temporarily employed in mobile communications. Patel assumes that a user of mobile communications has a service provider covering a particular geographical area and desires to enjoy similar services in a different geographical area. Therefore, when, or in advance of, moving into the different geographical area, the mobile user purchases bandwidth, i.e., communications services, in the new area.

The request for service and a negotiating process are generally illustrated in the flowcharts of Figures 6 and 7 of Patel. (The flowchart of Figure 4 of Patel, even as explained at column 8, lines 48-54, contains substantially less detail than the flowcharts of Figures 6 and 7 and, therefore, is not discussed further.) The flowcharts of Figures 6 and 7 are described in Patel from column 10, line 30 through column 12, line 14. The process according to Figure 6 with respect to a negotiation is described in the passage from column 10, line 55 through column 11, line 6. Nothing there describes comparing a first offer for purchase of bandwidth or communications services to a minimum selling price established by a communication user. Further,

there is no description that only if the first offer at least equals the selling price, transmitting an availability signal, not an acceptance, for the sale of bandwidth.

In the present invention, the probe detector accumulates telematic data and receives a purchase offer for that data that is compared to a selling price established in the probe detector. In Patel, if the probe detector is compared to the service provider, because the service provider (probe detector) has a service (data) to sell, then there is no analogy to the claimed invention. In Patel, the service provider does not receive an offer to purchase from the bandwidth user. Rather, the bandwidth user asks for an offer to sell, which is not an offer to buy. Then, by some criteria not explained in Patel, and not comparable to the established selling price of the probe detector, a decision is made as to whether to accept or reject the bandwidth supplier's proposal to sell.

In other words, contrary to the part of the rejection founded upon Patel, there is not, as alleged at page 4 of the Office Action, a cell phone in Patel that receives an offer to purchase anything from the cell phone. Because of these several differences, even if Hubschneider might be modified by Patel, the result would not include the important limitations of the final paragraphs of independent claims 1 and 11, directed to systems, and the steps of independent method claim 17. On that basis, namely that all of the elements of the invention as claimed in each of the three independent claims has not been shown to be present in the prior art relied upon, *prima facie* obviousness has not been established with respect to any pending claim.

The description in Patel concerning the process of Figure 7 is not different in pertinent part from the process of the flowchart of Figure 6, particularly as described in Patel in the passage in column 11 in lines 33-55. In the invention, the potential sale of telematic data by the vehicle through the probe detector is the result of an offer to buy, not an offer to sell, the reverse of the situation described in Patel. In other words, the further description of Patel is also insufficient to establish *prima facie* obviousness as to any pending claim.



Since, for the reasons discussed above, *prima facie* obviousness cannot be established by the hypothetical modification of Hubschneider with Patel as to any of the three pending independent claims, *prima facie* obviousness has not been established with respect to any pending claim. Therefore, discussion of the respective dependent claims is not necessary. However, some comments on the specific rejections of certain dependent claims are supplied.

Dependent claim 10 specifies that when the first offer of the polling signal is simply not responded to, that the system node transmits a second polling signal with a larger, second offer. In other words, the potential buyer in the invention bids against himself when the potential seller is silent. According to the Office Action at page 7, Patel describes this feature of claim 10 at column 10, lines 63-65. However, there is no such description in Patel.

The cited sentence of Patel merely states that, if agreement cannot be reached, negotiations end. Claim 10 states that if the first offer is met with silence, that a higher second purchase offer is made. The presentation of the second purchase offer obviously keeps the negotiation going and is not the same as the end of negotiations as described in the cited sentence of Patel. Thus, the rejection of claim 10, independent of the rejection of claim 1, is erroneous.

Claim 13 is directed to a system that provides a continuing bidding process, but a more complicated situation than is present in claim 10. The situation is more complicated because, unlike the silence through the non-transmission of availability signals in the system according to claim 10, in claim 13, where availability signals are transmitted, second offers are issued. The only requirement of the relationship between the second offers and the first offers is that they are different. In other words, the second offer may be lower than the first offer because more vehicles than desired may respond through their respective probe detectors to the first offer. Thus, the offer is reduced until only the desired number of probe detectors respond with an availability signal.

In rejecting claim 13, attention was directed to column 8, lines 48-56 of Patel describing a desire of a bandwidth purchaser for a lower cost. That desire is accommodated by accepting a lower level of service. There is simply no parallel with the description of claim 13, contrary to the transcription of the limitations of that claim at page 10 of the Office Action.

Moreover, there is no analog in any rational interpretation of the flowcharts in Figures 6 and 7 of Patel that could suggest claim 13. A corresponding situation would be a service provider offering bandwidth at one price and then, after acceptance, offering bandwidth at a lower price. That situation is not logical. Clearly, Patel cannot supply the limitation of claim 13, independent of the rejection of claims 11 and 12, from which claim 13 depends.

For the reasons described above, *prima facie* obviousness has not been established with respect to any claim because all of the elements of the claims have not been shown to be present in one or the other of Hubschneider and Patel. Of course, to establish *prima facie* obviousness, not only must the elements of the claims be shown to be present in the prior art, there must also be shown some motivation for modifying the primary reference with the secondary reference to produce the claimed invention. The rejection made here fails the second requirement for establishing *prima facie* obviousness, as well as failing the first requirement.

Hubschneider, like the invention, concerns an exchange of data. Apparently, some charge is made in Hubschneider for transferring telematic data from a central control source to a moving vehicle. A payment is made by the central unit for original telematic data collected by a vehicle. Patel, on the other hand, is never concerned with the sale or purchase of data. Patel is concerned with the purchase and sale of bandwidth or communications services, i.e., the possibility or availability of capacity for the transfer of data, not the transfer of data itself. Whether any information is ever transferred over the purchased bandwidth is irrelevant to Patel. Therefore, although Patel describes some kind of negotiation that relates to communication, there is no relationship between the telematic data sale and purchase of the invention and the

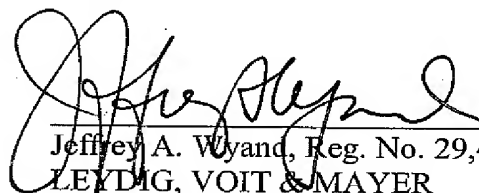
bandwidth sale and purchase of Patel. Moreover, the roles of buyer and seller are topsy-turvy in Patel as compared to the invention (and what might be inferred from Hubschneider with knowledge of the invention).

In other words, without knowledge of the invention, a person of skill in the art would not be led to consider some modification of the buy and sell transactions hinted at by Hubschneider with the unrelated negotiations of Patel. The only common factor is that the buying and selling in Hubschneider relates to transmission of information over a communication channel and Patel relates to the buying and selling of rights to use communication channels. That tenuous similarity is simply not sufficient, contrary to the paragraph bridging pages 4 and 5 of the Office Action, to provide the motivation required for modifying Hubschneider with Patel. The final sentence of that paragraph of the Office Action, asserting that achieving the best price for a consumer of telematic information would have compelled the modification, is, at best, speculative.

*Summary*

For the foregoing reasons, entry of the attached additional copy of the drawings filed with the patent application and reconsideration and withdrawal of the prior art rejections are earnestly solicited.

Respectfully submitted,



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